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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN FREDERICK
BERSTECHER,

Defendant and Appellant.

2d Crim. No. B290965
(Super. Ct. No. 1504181)
(Santa Barbara County)

Martin Frederick Berstecher was convicted by jury of felon in possession of ammunition (Pen. Code, § 30305, subd. (a)(1)), possession of a large capacity ammo magazine (Pen. Code, § 32310, subd. (c)), possession of heroin for sale (Health & Saf. Code, § 11351), and possession of methamphetamine for sale (Health & Saf. Code, § 11378) with special findings that he possessed large quantities of heroin and methamphetamine for sale (Pen. Code, §§ 1203.07, subd. (a)(1); 1203.073, subd. (b)(2); Health & Saf. Code, § 11352.5, subd. (1)). The trial court sentenced appellant to five years four months state prison and

ordered appellant to pay various fines and fees. Appellant appeals from a pretrial order denying his motion to unseal a search warrant affidavit and motion to quash and/or traverse the search warrant. We affirm. (*People v. Hobbs* (1994) 7 Cal.4th 948, 977 (*Hobbs*).)

Factual and Procedural History

On November 29, 2016, the Santa Barbara County Sheriff's Office executed a search warrant at appellant's house and found 504 grams of heroin, 84.1 grams of methamphetamine, narcotics packaging, two digital scales, \$5,000 cash, ten rounds of live ammunition, a firearm magazine capable of holding more than 10 rounds, and cell phones with text messages concerning the sale of drugs. A magistrate issued the search warrant based on a sealed affidavit that stated, among other things, that a confidential informant had reported drug trafficking at the house.

Before trial, appellant filed a motion to unseal the search warrant affidavit, and to quash and/or traverse the search warrant pursuant to the Fourth and Fourteenth Amendments to the United States Constitution. Appellant requested that the trial court review the search warrant affidavit in camera. (See *Hobbs, supra*, 7 Cal.4th at pp. 971-972.)

On July 26, 2017, the trial court held an in camera hearing outside appellant's presence, at which it received testimony and reviewed the sealed search warrant affidavit. The trial court found that the search warrant affidavit set forth probable cause for the issuance of the search warrant and contained no false statements. The trial court denied appellant's motion to unseal the unredacted affidavit and motion to quash and/or traverse the search warrant, but ordered that a redacted version of the search warrant affidavit be released to appellant.

At trial, an officer testified that appellant admitted the contraband found in his bedroom was his.

Hobbs Motion

It is settled that a trial court may seal all or part of a search warrant affidavit if necessary to protect confidential information. (*Hobbs, supra*, 7 Cal.4th at p. 971.) In such cases, where the defendant moves to traverse or quash the search warrant, the trial court is required to conduct an in camera hearing, (*id.* at p. 972) and determine whether there are sufficient grounds for maintaining the confidential information and the extent of the sealing necessary to preserve the confidentiality. (*Ibid.*)

Appellant requests that we independently review the in camera proceedings. (*Hobbs, supra*, 7 Cal.4th at p. 976.) We have reviewed the search warrant affidavit and sealed transcript of the in camera hearing.¹ Like the trial court, we conclude that sufficient grounds exist to maintain the confidentiality of the information contained therein, that sealing was necessary for that purpose, and that the search warrant affidavit sets forth competent evidence to find probable cause. (*People v. Martinez* (2005) 132 Cal.App.4th 233, 241-242; *Hobbs, supra*, at p. 977.) Thus, the trial court did not err in denying appellant's motion unseal the search warrant affidavit and motion to quash and/or traverse the search warrant. (*Ibid.*)

¹ We augmented the appellate record to include the sealed search warrant affidavit and sealed reporter's transcript of the in camera proceedings. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

The judgment is affirmed.
NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Patricia L. Kelly, Judge

Superior Court County of Santa Barbara

Robert L. Hernandez, under appointment by the
Court of Appeal for Defendant and Respondent.

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